

**Testimony of Michael Gadola, Legal Counsel, Governor Rick Snyder, in support of HB 5128 (H-1)
(Business Courts) House Judiciary Committee May 10, 2012**

Thank you, Chairman Walsh and members of the committee for allowing me to testify in support of HB 5128 (H-1), which would establish a business court as part of Michigan's One Court of Justice. I commend Chairman Walsh for introducing this important piece of legislation and for bringing it forward for the committee's consideration this morning.

With me today are Diane Akers and Andrew Doctoroff, two highly accomplished and respected business lawyers who have made important contributions to the development of the concept of a business court or business docket in Michigan. Diane and Andrew co-chaired the Business Impact Committee of the State Bar of Michigan's Judicial Crossroads Task Force, which nearly two years ago recommended the creation of pilot business dockets in Michigan's circuit courts. I will keep my remarks brief so that you can hear from these two experts on the subject matter of this legislation.

First, let me express the administration's unequivocal support of HB 5128 (H-1). We believe this legislation represents an important first step in the reinvention and modernization of Michigan's judiciary. It is part of a broader strategy to improve the operation of Michigan's courts through the utilization of best practices in court administration and the sharing of judicial resources through the use of concurrent jurisdiction courts. This legislation is also important for what it can mean for the improvement of Michigan's business climate at a time when Michigan needs to pull every lever at its disposal to create more and better jobs. Frankly, at this stage of the game, Michigan needs to create a business court just to keep pace with other states that have already taken this important step.

Allow me to briefly describe what the bill does. First and foremost, it is nonprescriptive. Each circuit with more than three circuit judges will submit a plan for the operation of a business docket. The Supreme Court will designate the business docket judges in each circuit, who will serve terms of six years. The courts are free to design the operation of their business dockets to suit their own unique needs in a way that will encourage experimentation and innovation. Beyond that, the bill simply describes the jurisdiction of the business court (what's "in" and what's "out") and encourages the use of technology such as e-filing and the publication of all written opinions on an indexed website. By including the 17 circuits with 3 or more circuit judges, business dockets will exist in the courts where 82 percent of all general civil filings occur. This very likely means that as much as 90 percent of business disputes are filed in courts that will have business dockets under this legislation.

HB 5128 will allow business cases to be heard by judges with an interest in business matters who have experience in the resolution of these typically complex cases. It will also encourage the creation of a body of case law at the trial level that will guide the resolution of future disputes and bring greater consistency and predictability to the law. If the business docket works as planned, business cases will be resolved more quickly, reducing costs for the litigants and the court system as a whole. This has benefits for other court users by freeing judicial resources for the resolution of equally important family, criminal, and general civil matters. Finally, if the court succeeds in its mission it will create an atmosphere that is more hospitable to job-creators who are attracted to a forum where the law is predictable and reliable.

Equally important it seems to me is what HB 5128 does not do. First, the bill does not create a hierarchy of justice for businesses and individuals. Michigan already has a variety of specialized dockets, with a bill to create another such docket for matters involving veterans also on today's agenda. The State

Court Administrative Office identifies eight different types of specialty courts already at work in Michigan, not including the pilot business dockets already in place. In fact, the creation of the family division of circuit court in the mid-1990s may have represented the legislature's first effort at the creation of a specialized docket. These courts are about better managing cases that deserve special care and handling by our justice system. This benefits the entire court system, not any one group of litigants over another.

Second, business courts are not biased in favor of businesses and against individuals. The design of the business court's jurisdiction ensures that the vast majority of suits in the court will be business to business in nature. When an individual is involved as a party to a business court dispute, it will be because the individual was a former officer, director, or employee of a business and the dispute arose from those business relationships. Personal injury actions, product liability actions, landlord-tenant matters, civil rights, and wrongful discharge actions are all expressly excluded from the court's jurisdiction.

To summarize, the enactment of HB 5128 will create a cadre of judges with specialized expertise in the resolution of complex business matters, allowing all cases to progress more efficiently through the court system, while encouraging the use of technology in the courts. I strongly urge the committee to support the H-1 substitute for HB 5128.